

Letter of Findings: 02-20181930
For the Tax Period January 1 through September 30, 2016

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Document.

HOLDING

For the Tax Period January 1 through September 30, 2016, Corporation was responsible for the additional corporate income tax, which was previously refunded and carried forward to be applied to its then future tax liability. Corporation failed to demonstrate that it had reasonable cause for penalty abatement. Interest could not be abated because it was statutorily required.

ISSUES

I. Indiana Corporate Income Tax - Overpayments and Application.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-9-1; IC § 6-8.1-9-2; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests that the Department erroneously assessed approximately \$800,000 for the Tax Period January 1 through September 30, 2016.

II. Tax Administration - Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-8-1.5.

Taxpayer requests that the Department waive the statutory interest.

III. Tax Administration - Underpayment Penalty and Negligence/Late Penalty.

Authority: IC § 6-3-4-4.1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer argues that the underpayment penalty and the negligence/late penalty should be abated.

STATEMENT OF FACTS

Taxpayer is an out-of-state company doing business in Indiana since 2000. For the tax year 2015, Taxpayer reported and remitted an approximately \$2.1 million dollars Indiana income tax.

For the tax period January 1 through September 30, 2016 ("Tax Period at Issue"), Taxpayer did not make any estimated payment for its first quarter before the statutory due date. On or about June 14, 2016, Taxpayer made its estimated payment of \$659,000 for its second quarter. Taxpayer also made its estimated payment of \$710,000 for its third quarter on or about September 14, 2016. Taxpayer did not make any estimated payment for its fourth quarter because the Tax Period at Issue ended September 30, 2016.

Taxpayer subsequently filed its Indiana corporate income tax return (Form IT-20) for the Tax Period at Issue on or about July 14, 2017, with an extension of time, Form 7004. Based on its IT-20 filing, Taxpayer had an overpayment for the Tax Period at Issue; Taxpayer thus requested its overpayment to be carried forward and be applied to its future tax liability, namely the next tax period, October 1 through December 31, 2016.

In August 2017, the Indiana Department of Revenue ("Department") reviewed Taxpayer's return. The Department determined that Taxpayer failed to make a sufficient amount of estimated payments for its first quarter and second quarter for the Tax Period at Issue. Thus, Taxpayer was assessed an underpayment penalty for both quarters. The assessment reduced the amount of Taxpayer's overpayment for the Tax Period at Issue to be carried forward. On August 29, 2017, the Department issued a refund of \$794,617, which was then carried forward on the same day to be applied to Taxpayer's then future tax liability for the tax period October 1 through December 31, 2016.

On or about January 30, 2018, Taxpayer amended its Indiana corporate income tax return for the Tax Period at Issue. In its amended return (Form IT-20X), Taxpayer reported additional Indiana corporate income tax and remitted approximately \$1.2 million dollars. Upon review, the Department assessed Taxpayer additional income tax, negligence/late penalty, and interest.

Taxpayer timely protested the proposed assessment, requesting that the Department make the "Final determination without a hearing." Taxpayer also did not respond to the Department's September 2018 phone request for clarification. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment based on the information available to the Department and within the file. Additional facts will be provided as necessary.

I. Indiana Corporate Income Tax - Overpayments and Application.

DISCUSSION

For the Tax Period at Issue, in addition to penalty and interest, the Department proposed to assess Taxpayer an additional \$794,617 of income tax pursuant to the amended return, IT-20X. The \$794,617 represented the refund of an overpayment for the Tax Period at Issue, which subsequently was carried forward and applied to Taxpayer's then future tax liability for the tax period October 1 through December 31, 2016, as Taxpayer requested.

Taxpayer claimed that "[b]ased on the originally filed 9/30/16 IT-20 tax return," it "had an \$838,823 carryforward." Taxpayer asserted that it "did not receive[] a refund of \$794,617 as stated on the notice" and thus was not liable for the \$794,617.

The issue is whether the Department erroneously assessed Taxpayer an additional \$794,617 pursuant to Taxpayer's amended return, IT-20X, for the Tax Period at Issue.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "Each assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Rev.* 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

As a general rule, if a taxpayer believes that it has overpaid the tax, the taxpayer is required to timely file a claim for a refund with the Department pursuant to IC § 6-8.1-9-1. In addition, IC § 6-8.1-9-2(a), in relevant part, provides:

If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. **The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. Subject to subsection (c), if any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities. (Emphasis added).**

Taxpayer, in this instance, claimed that it had "an \$838,823 carryforward" based on its original IT-20 in 2017. Taxpayer asserted that it did not receive the \$794,617 refund and thus it was not responsible for that amount stated in the proposed assessment. Taxpayer stated, in relevant part:

Based on the originally filed 9/30/16 IT-20 tax return . . . the taxpayer has an \$838,823 carryforward. On the form IT-20X amended return, the taxpayer had \$1,188,689 balance due and the payment was submitted to the Indiana [D]epartment of Revenue on 12/04/2017 The taxpayer did not received a refund of \$794,617 as stated on the notice.

Taxpayer further provided a copy of its returns and a copy of its \$1,188,689 payment to support its protest.

Upon review, however, Taxpayer is mistaken. Specifically, for the Tax Period at issue, Taxpayer here filed its original IT-20 in July 2017, claiming an overpayment of \$838,823. Taxpayer requested that overpayment to be carried forward. Taxpayer, however, did not make sufficient estimated payments for its first and second quarters for the Tax Period at Issue. Taxpayer thus was assessed an additional underpayment penalty (discussed in Issue III). Since a portion of Taxpayer's overpayment was applied to the underpayment penalty, Taxpayer only had a \$794,617 overpayment, not \$838,823. IC § 6-8.1-9-2(a).

The \$794,617 overpayment was refunded in August 2017. In turn, as Taxpayer requested, the same amount was carried forward to be applied to its then future tax liability for the tax period October 1 through December 31, 2016. *Id.* In other words, Taxpayer requested the \$794,617 overpayment to be carried forward under IC § 6-8.1-9-2(a). The Department recorded a refund of the \$794,617 overpayment for the Tax Period at Issue, and at the same day, recorded the same amount of overpayment as a credit which was applied to its then future tax liability for the tax period October 1 through December 31, 2016. Taxpayer did not receive a physical refund of \$794,617 but its then future tax liability was reduced by the credit of \$794,617 and thus Taxpayer was deemed to have received the refund of \$794,617. The IT-20X further demonstrated that Taxpayer claimed total credits of \$2,165,000 (in Line 16) which was the same as stated on its original return, IT-20, Line 40. Thus, in the absence of other supporting documentation demonstrating otherwise, to properly compute Taxpayer's tax liability pursuant to its IT-20X for the Tax Period at Issue, the \$794,617 refund must be included in the calculation of the proposed assessment.

In short, even though Taxpayer did not receive the physical refund check, the amount was deemed refunded to Taxpayer because that \$794,617 refund was carried forward, as Taxpayer requested, and further reduced its then future tax liability for the tax period October 1 through December 31, 2016.

FINDING

Taxpayer's protest of Issue I is respectfully denied.

II. Tax Administration - Interest.

DISCUSSION

The Department imposed interest because Taxpayer's IT-20X reported an additional tax liability but it had insufficient tax credit or payment before the due date. Taxpayer asked that the Department waive the interest.

IC § 6-8.1-10-1(a) states, "[i]f a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment."

Whenever the taxpayer makes a partial payment on its tax liability, the Department is required to apply the partial payment first to any penalty owed by the taxpayer, then to any interest owed by the taxpayer, and finally to the tax liability of the taxpayer. IC § 6-8.1-8-1.5.

A taxpayer is also responsible for a ten percent negligence penalty, interest, in addition to the base tax, when the Department determines that the taxpayer incurs a deficiency. When a partial payment is received, the Department must apply any penalties first and then interest. As a result, the unpaid tax continues accruing the interest and the interest may not be waived under IC § 6-8.1-10-1(e).

In this instance, a portion of Taxpayer's payment under protest was applied to the interest. Statutory interest is mandatory when Taxpayer incurred a deficiency upon a determination by the Department. IC § 6-8.1-10-1(a). The

FINDING

Taxpayer's protest of Issue II is respectfully denied.

III. Tax Administration - Underpayment Penalty and Negligence/Late Penalty.

DISCUSSION

For the Tax Period at Issue, Taxpayer was assessed an underpayment penalty for the first and second quarters because it did not make sufficient estimated payments. In addition, the Department imposed a ten percent negligence/late penalty because it had insufficient tax credit or payment before the due date. Taxpayer requested that both penalties to be abated.

IC § 6-3-4-4.1, in relevant part, states:

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

- (1) twenty-five percent (25[percent]) of such corporation's estimated adjusted gross income tax liability for the taxable year; or
- (2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by IC [§] 6-8.1-10-2.1(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

- (1) the annualized income installment calculated under subsection (c); or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25[percent]) of the corporation's final adjusted gross income tax liability for such taxable year.

Additionally, a person is subject to a ten percent penalty if the person "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment." IC § 6-8.1-10-2.1(a)(2) and (b).

IC § 6-8.1-10-2.1(d) states that "[i]f a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return, . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty."

[45 IAC 15-11-2](#)(b) further explains:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department shall abate the penalty when a taxpayer "affirmatively establishes that the failure to . . . pay the

full amount of tax due . . . or pay a deficiency was due to reasonable cause and not due to negligence." [45 IAC 15-11-2\(c\)](#); see also IC § 6-8.1-10-2.1(d).

Finally, in order to establish reasonable cause, the taxpayer is required to demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed" [45 IAC 15-11-2\(c\)](#). The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case." *Id.* In determining whether the taxpayer has reasonable cause, the Department is required to consider the following factors:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment. *Id.*

Taxpayer, in this instance, claimed that both penalties should be abated [b]ased on the facts that, for the Tax Period at Issue, (1) Taxpayer had an overpayment based on its original IT-20 filing, (2) Taxpayer promptly paid additional income tax as stated on its IT-20X, and (3) Taxpayer did not receive the refund of \$794,617.

Upon review, however, the Department is not able to agree. In particular, Taxpayer here is a sophisticated multistate corporation, which reported approximately \$2.1 million dollars of Indiana income tax in the prior year, 2015. Also, Taxpayer has been doing business in Indiana for years. Taxpayer thus was aware that it is required by statute to make a sufficient estimated payment each quarter for the Tax Period at Issue; but Taxpayer failed to do so. The Department's records specifically showed that Taxpayer did not make any payments until June 2016. Taxpayer here simply referred to the above facts to support its abatement request without further explanation. Those facts alone were not reasonable cause to justify its failure to make sufficient estimated payments for the first and second quarters. Those facts alone also failed to demonstrate it was not negligent to remit the additional \$1.2 tax liability on or before the due date.

Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to abate both penalties.

FINDING

Taxpayer's protest of Issue III is respectfully denied.

SUMMARY

Taxpayer's protest of the Issue I, Issue II, and Issue III is respectfully denied.

November 7, 2018

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